

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1048 of 1982

WITH

CROSS OBJECTIONS

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and
MR.JUSTICE N.N.MATHUR

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

KAMLESH AMRUTLAL PATEL

Appearance:

M.R. ANAND, GOVERNMENT PLEADER WITH MR. K.M. MEHTA,
A.G.P. for the Appellants.
MR SURESH M SHAH for Respondent No. 1 to 3.
MR PM RAVAL for Respondent No. 5
MR. A.R. MEHTA, for Respondent No.6

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE N.N.MATHUR

Date of decision: 09/10/96

ORAL JUDGEMENT

1. The State of Gujarat, through the Chief Secretary and Deputy Director of Public Health Services has preferred this appeal against the award made by the Motor Accident Claims Tribunal(Auxiliary), Rajkot, in Motor Accident Claim Petition No.411 of 1979. Respondents No.1, 2 and 3, original opponents No.1 to 3, have filed their Cross Objections, inter alia, contending that the Tribunal has seriously erred in calculating the amount of damages and ought to have awarded the full compensation of Rs.1,70,000/-.

2. About the incident in question, there is no dispute and, therefore, it is not required to have a detailed discussion. Suffice it to say that Amrutlal S. Patel, the deceased, who was at the relevant time working as Taluka Development Officer, sustained injuries in the accident and died. The vehicle No.GRG 858 was driven in a rash and negligent manner, as a result of which, the deceased who was travelling in the said Jeep Car died as he sustained injuries as the jeep turned turtle on account of the rash and negligent driving of the driver of the said vehicle.

3. The Tribunal, in paragraph 15, for the purpose of quantum to be awarded, has discussed in detail the salary which was being drawn by the deceased at the time of the accident and as to what he would be drawing after his retirement. The Tribunal considered the income of the deceased at Rs.1227.60 and arriving at the figure of Rs.800/- per month as his contribution to the family, the Tribunal came to the conclusion that a sum of Rs.9600/ would have been made available to the members of the family. Since the deceased would have retired on 30th June, 1985, the Tribunal calculated the loss at Rs.57,600/-.

The Tribunal considering that the deceased would have received pension of Rs.476/- per month approximately and considering that the deceased being a Law graduate, if in future would practice as a Lawyer, would also earn something and, thus, came to the conclusion that a sum of Rs.33,600/- could be considered for the future income considering the average span of life of 60 years and, accordingly, awarded a sum of Rs.91,200/-. Over and above this, the Tribunal awarded a sum of Rs.5000/by way of solatium, totalling to Rs.96,200/-, in all.

4. In the case of U.P. State Road Transport Corporation and Ors. v. Trilok Chandra and Ors., reported in 1996(3) G.L.R., 136, the Apex Court

considered the change in law and indicated as to how the Court should calculate or arrive at a figure for compensation. Our attention is drawn to paragraph 15 of the judgment and considering the language used in that paragraph and the income which in the instant case the deceased was earning per month, if calculated, the dependency benefit would be in all Rs.1,19,824/-. Mr. Shah, the learned Advocate, submitted that considering the income of Rs.1242 per month, if divided into four heads, it will come to Rs.310/- per head (all being major). If this amount is deducted from Rs.1242/-, the balance would be Rs.932/-. Looking to the personal expenses, if a sum of Rs.100/- is deducted, the net figure would be Rs.832/- and this would be available to the members of the family. On the basis of this, the total income per year would be Rs.9984/- and if multiplier of 11 is applied looking to the Schedule to the Motor Vehicles Act, 1988 with 1994 amendment, the claimants would be entitled to get Rs.1,09,824/-. Mr. Shah submitted that as held by the Apex Court in the said case, conventional amount can be raised to a figure of not more than Rs.10,000/- and, considering this figure, the total amount which the claimants would be entitled to would be Rs.1,19,824/-. Thus, in view of the decision of the Apex Court in the case of U.P. State Road Transport Corporation (supra), the claimants would be entitled to a sum of Rs.1,19,824/-.

5. Mr. Mehta, learned Asstt. Government Pleader, submitted that the Tribunal has committed an error in coming to the conclusion that, opponent-State of Gujarat and District Panchayat, Rajkot are required to pay the compensation because opponent No.1-driver was driving the vehicle and the vehicle was temporarily allotted to the District Panchayat by the State Government. The Tribunal considered policy Ex.77 with respect to the third party risk and held that, as the injured persons who were travelling by this jeep were the servants of the Panchayat, they cannot be considered to be third party so far as accident is concerned. In our opinion, this is misreading of the policy and the provision of law. Looking to the policy Ex.77, it is not open for the Insurance Company to say that the Insurance Company is not liable to pay the compensation. However, on behalf of the Insurance Company, Mr. A.R. Mehta pointed out that the Insurance Company at the most can be held liable to the tune of Rs.50,000/- only and not more than that. A Full Bench of this Court, in the case of New India Assurance Co. Ltd. v. Thakor Bhemaji Ganeshji & Ors., reported in 1993(2) GLR 1051 considered the conflicting views expressed by this Court in the cases reported in

1979 GLR 134 and 1988(2) TAC 135. The Court held that "it specifically provides that the policy of insurance shall cover any liability, in respect of persons other than passengers carried for hire or reward. This clause, therefore, would naturally include passengers carried in a vehicle by reason of or in pursuance of a contract of employment. This would be a perfectly natural and literal interpretation of clause (i). Clause (ii) speaks of passengers without referring to the category in which they fall. However, when the category of 'passengers carried for hire or reward' is specifically excluded in clause (i), that clause would cover all other persons including the passengers carried in the vehicle by reason of or in pursuance of the contract of employment. Moreover, clause (ii) does not speak of the remaining type of passengers in order to distinguish it from clause (i). Therefore, by implication it would mean that clause (ii) applies to passengers carried for hire or reward." In view of the aforesaid decision, Mr. Mehta for the Insurance Company was not in a position to say that the Insurance Company is not liable and in view of policy Ex.77, the Insurance Company is liable to the tune of Rs.50,000/-. It is clear that the deceased was an employee of the State Government and the jeep belonged to the State Government.

6. In the result, the appeal filed by the State Government is allowed to the extent that a sum of Rs.50,000/- with proportionate interest and costs could be recovered by the State from the Insurance Company and to that extent, the Insurance Company is liable, and for the rest of the part, the appeal of the State fails. So far as the cross-objections filed by Mr. Shah are concerned, in view of what we have discussed hereinabove, the same are required to be allowed and, instead of the conclusion of the Tribunal that the claimants would be entitled to Rs.96,200/-, in all the award shall be for Rs.1,19,824/-. Just for the sake of rounding up the figure, it could be stated that the claimants are entitled to Rs.1,20,000/-. The award shall stand modified accordingly.

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